Supreme Court, U.S.
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No. 95-885

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDWARD H. MINOR,
Petitioner,

v.

STATE OF TEXAS, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR ALLSTATE INSURANCE COMPANY, *et al.* IN OPPOSITION

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Counsel represents the following Respondents:

1. Allstate Insurance Company
2. Allstate Property and Casualty Company
3. Allstate Texas Lloyd's Insurance Company, Inc.
4. Wayne E. Hedien
5. Raymond H. Kiefer
6. David B. Winn
7. Gary E. Briggs
8. Jane Elliott
9. A.J. Belohlavy

QUESTIONS PRESENTED

1. Whether the Circuit Court of Appeals properly dismissed this action for lack of subject matter jurisdiction.

2. Whether the Petitioner's action was properly dismissed for failure to state a claim upon which relief could be granted.

LIST OF PARTIES AND NAMES OF AFFILIATED CORPORATIONS

The following individual is the Petitioner and Plaintiff/Appellant below:

1. Edwin H. Minor

The following individuals and parties are the Respondents and Defendants/Appellees below:

1. State of Texas
2. District Judge, Pat McDowell Personally and as Presiding Judge, First Administrative Judicial Region
3. Dallas County
4. County Judge Robert E. Day Personally and as Dallas County Judge
5. Allstate Insurance Company
6. Allstate Property and Casualty Company
7. Allstate Texas Lloyd's Insurance Company, Inc.
8. Wayne E. Hedien
9. Raymond H. Kiefer
10. David B. Winn
11. Gary E. Briggs
12. Jane Elliott
13. A. J. Belohlavy

14. Fisk & Fielder, P.C.

15. R. Lynn Fielder

16. Jeff D. Fudge

Under Supreme Court Rule 29.1, the following is a list naming all parent companies and subsidiaries of each company represented:

1. Allstate Insurance Company
parent(s): Allstate Corporation
subsidiary(s):

(i) After Six Holding Corporation
(ii) Cardiologic Systems, Inc.
(iii) Fallowfield Developers Limited Partnership
(iv) Quantitative Data Systems, L.P.
(v) Sanguine/A Anadarko, Ltd.
(vi) Saugutuck II Cellular Investment Corp.
(vii) Science Center Associates
(viii) Scripps Center Associates
(ix) Washington Business Park Associates
(x) Gainey Ranch Financial
(xi) HNG Storage Co.
(xii) Heard Energy Corp.
(xiii) Propane Continental

2. Allstate Property and Casualty Company
parent(s): Allstate Insurance Company
subsidiary(s): None

3. Allstate Texas Lloyd's Insurance Company, Inc.
parent(s): Allstate Insurance Company
subsidiary(s): None

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OPINIONS BELOW

The Fifth Circuit's decision was based on the district court's lack of subject matter jurisdiction over the action as well as the Petitioner's failure to state a claim for relief upon which relief could be granted under Fed. R. Civ. P. 12(b)(6). (App. at 1-4, 15-20).[1]

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[1] For the sake of brevity, Allstate has not included an appendix to this brief but instead will rely upon the appendix accompanying the Petitioner's petition and will reference its pertinent portions, as well as the relevant portions of the petition, as follows: App. at ___; Petition at ___.

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Respondents Allstate Insurance Company, Allstate Property and Casualty Company, Allstate Texas Lloyd's Insurance Company, Inc., Wayne E. Hedien, Raymond H. Kiefer, David B. Winn, Gary E. Briggs, Jane Elliott, and A. J. Belohlavy (collectively, "Allstate") respectfully request that this Court deny the petition for writ of certiorari, seeking review of the decision of the United States Court of Appeals for the Fifth Circuit in this action.

STATEMENT OF THE CASE

Petitioner Edward H. Minor ("Minor") was an insured of Allstate under a homeowner's policy. (Petition at 4). Allstate refused to settle Minor's claim for an alleged loss

under the policy due to his repeated refusal to submit to an examination under oath covering his alleged loss. (App. at 26-27). As a result, Minor brought suit in Texas state court on June 30, 1992 against Allstate. This action was abated by the state court because of Minor's failure to comply with the contractual provision in his homeowner's policy providing for an examination under oath. Minor then filed suit on May 3, 1993 in federal district court for alleged misconduct and civil rights violations by every defendant, opposing attorney, or judge in his abated state court action. (App. at 21-50).

The district court dismissed Minor's claims against all of the defendants/respondents for failure to state any actionable claim. (App. at 1-14). On appeal, the Court of Appeals for the Fifth Circuit held that if the district court had had jurisdiction, all of the grounds for dismissal under Fed. R. Civ. P. 12(b)(6) would have been affirmed. (App. at 8). The Circuit Court further determined, however, that subject matter jurisdiction was lacking under this Court's decisions in District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) and Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) (hereinafter the "Rooker-Feldman doctrine"). (App. at 18-20). Accordingly, dismissal of Minor's causes of action in their entirety was affirmed.

REASONS FOR DENYING THE WRIT

The format of Minor's petition makes it difficult to ascertain which of his purported "Reasons for Granting the Writ" applies to the Allstate respondents. Nonetheless, both of the Fifth Circuit's stated reasons for affirming the district court's dismissal of Allstate--lack of subject matter jurisdiction and failure to state a claim--were valid. Minor has failed to allege or identify any conflict between the Fifth Circuit's decision and that of any other United States Court of

Appeals or state court of last resort. No important federal question has been presented, let alone decided in a manner adverse to relevant decisions of this Court.

1. The district court lacked subject matter jurisdiction to review Minor's claims.

Minor's petition should be denied because the Fifth Circuit correctly determined that the district court lacked subject matter jurisdiction to review what had transpired in the state court action. The court below determined that Minor's purported federal "civil rights" action constituted an appeal from the Texas state court's entry of the abatement order. (App. at 19). The Rooker-Feldman doctrine holds that no court of the United States other than the Supreme Court shall entertain a proceeding to reverse or modify a final state court judgment because the jurisdiction of the district court is original and review of such determinations would constitute an improper exercise of appellate jurisdiction. Feldman, 460 U.S. at 476, 482; Rooker, 263 U.S. at 416; see also Johnson v. De Grandy, 114 S. Ct. 2647, 2654 (1994), again acknowledging the continuing validity of the Rooker-Feldman doctrine.[2]

As further interpreted, the Rooker-Feldman doctrine is not limited to final judgments but extends to all forms of state court actions as well. Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 23-27 (1987) (Marshall, J., concurring); Feldman, 460 U.S. at 486 n.16.[3] Thus, Minor's contention on page 9 of the

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[2] Of interest is a discussion of the genesis of the Rooker-Feldman doctrine articulated in GASH Assoc. v. Village of Rosemont, Ill., 995 F.2d 726, 727-29 (7th Cir. 1993).

[3] Accord Gentner v. Shulman, 55 F.3d 87, 89 (2d Cir. 1995); Port Authority Police Benevolent Ass'n, Inc. v. Port Authority of New York and

(continued...)

petition to the contrary notwithstanding, the fact that the state court abatement order was not a final judgment is of no consequence.

It is also beyond doubt that Minor's claims against Allstate are "inextricably intertwined" with the state court's decision granting the plea in abatement. Minor attempted to allege a wide-ranging conspiracy to deny him his constitutional rights between, among others, the state court judge who granted Allstate's plea in abatement, the State of Texas, and Allstate. This Court has stated that when claims such as Minor's "are inextricably intertwined with the state court's denial in a judicial proceeding . . . then the district court is in essence being called upon to review the state-court decision. This the district court may not do." Feldman, 460 U.S. at 486 n.16. Stated differently, Minor cannot circumvent the Rooker-Feldman doctrine merely by casting a complaint in the form of a civil rights action.

The Circuit Court's decision was also consistent with other circuit courts' interpretation of the Rooker-Feldman doctrine. See, e.g., Liedtke v. State Bar of Texas, 18 F.3d 315, 317 (5th Cir.), cert. denied, 115 S. Ct. 271 (1994); Landers Seed Co. v. Champaign Nat'l Bank, 15 F.3d 729, 732-33 (7th Cir.), cert. denied, 115 S. Ct. 62 (1994); Port Authority Police Benevolent Ass'n, Inc v. Port Authority of New York and New Jersey Police Dep't., 973 F.2d 169, 177-79 (3d Cir. 1992); Keene Corp. v. Cass, 908 F.2d 293, 296-97 & n.2 (8th Cir. 1990); Hale v. Harney, 786 F.2d 688, 690-91 (5th Cir.

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[3](...continued)
New Jersey Police Dep't., 973 F.2d 169, 178-79 (3d Cir. 1992); Lancellotti v. Fay, 909 F.2d 15, 17 (1st Cir. 1990); Keene Corp. v. Cass, 908 F.2d 293, 297 & n.2 (8th Cir. 1990); Hale v. Harney, 786 F.2d 688, 691 (5th Cir. 1986).

1986). Minor has offered no authority that the Rooker-Feldman doctrine was improperly applied, and the Fifth Circuit's affirmation of the district court's granting of Allstate's motion to dismiss was proper.

2. Minor's claims against Allstate were also properly dismissed because they failed to state a cause of action under Fed. R. Civ. P. 12(b)(6).

The Fifth Circuit also held that even if the district court below had had subject matter jurisdiction, the dismissal would have been required pursuant to Fed. R. Civ. P. 12(b)(6).[4]

a. Minor's 42 U.S.C. § 1981 claims were based exclusively on "post-termination" contractual conduct that does not constitute actionable conduct.

Minor cannot assert a viable claim under 42 U.S.C. § 1981 against Allstate because his claims are based exclusively on "post-formation" contractual conduct that occurred prior to November 21, 1991. Specifically, Minor alleged that Allstate violated § 1981 by unjustifiably denying his insurance claim. (App. at 26-27). Allstate's alleged acts could have occurred only after the formation of the insurance contract between Minor and Allstate. It is undisputed that Allstate's refusal to settle Minor's insurance claim, because of his repeated failure

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[4] With respect to pleadings standards under Fed. R. Civ. P. 12(b)(6), if the district court concludes that the allegations contained in the complaint do not state a claim upon which relief can be granted, then an order of dismissal is proper. Yazoo County Indus. Dev. Corp. v. Suthoff, 454 U.S. 1157, 1161 (1982); see also Neitzke v. Williams, 490 U.S. 319, 327 (1989), holding that dismissal is proper "without regard to whether [a claim] is based on an outlandish legal theory or on a close but ultimately unavailing one."

to appear for an examination under oath, occurred in 1990. (App. at 26-34). Such "post-formation" contractual acts, as alleged by Minor, do not constitute actionable conduct under § 1981 as a matter of law under this Court's decision in Patterson v. McLean Credit Union, 491 U.S. 164 (1989), which held that the protection afforded by § 1981 extended only to the formation of contracts. The Court rejected any right under § 1981 to "enforce" contracts. Section 1981 merely guarantees access to legal process in contractual disputes. The statutory guarantee is irrelevant to post-formation claims of interference with contractual rights. Patterson, 491 U.S. at 176-78.[5]

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[5] Section 1981 as amended states as follows:

> (a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
>
> (b) For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
>
> (c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. § 1981. Subsections (b) and (c) of § 1981 were added by the Civil Rights Act of 1991, which became effective on November 21, 1991. As Amended Pub. L. 102-106, Title I, § 101, November 21, 1991, 105 Stat. 1071.

The Court recently affirmed that the 1991 amendments to § 1981, which now bring post-formation actions within the ambit of § 1981, do not apply retroactively. McKnight v. Gen. Motors Corp., 114 S. Ct. 1826 (1994); Landgraf v. USI Film Prods., 114 S. Ct. 1483, 1506, 1508 (1994). As noted, the effective date of the 1991 amendments to § 1981 is November 21, 1991. Accordingly, the Patterson decision and its progeny bar Minor's § 1981 claims against Allstate because all of the conduct complained of against Allstate occurred in 1990, prior to the amendments' effective date.

b. Minor's pro se status was not a basis for a "class-based" discrimination claim under § 1981.

Minor also erroneously intimates that an alleged discrimination against a pro se litigant somehow qualifies as "class-based" discrimination. (Petition at 11-17). This type of allegation does not constitute a cognizable claim of class-based discrimination. See generally United Bhd. of Carpenters and Joiners of Am. v. Scott, 463 U.S. 825, 837-38 (1983).

c. Minor had no claims against Allstate for violations of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

To the extent that Minor claimed violations of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution against Allstate, they too were properly dismissed because Minor failed to sufficiently allege (nor could he have alleged) that the Allstate defendants were federal officials or that they acted under the authority of federal law. See, e.g., Bivens v. Six Unknown Named Agents, 403 U.S. 388, 389-90, 395-97 (1971).

Minor's further claim of an implied right of action under the Fifth, Sixth, and Fourteenth Amendments was also

properly dismissed. Minor failed to allege (nor could he) that the Allstate defendants acted under the color of state law. See generally Rendell-Baker v. Kohn, 457 U.S. 830, 838 (1982).

d. Minor had no § 1981 claims against individual respondents Hedien, Kiefer, and Winn.

Finally, Minor sued Respondents Hedien, Kiefer, and Winn individually as "officers . . . of the [Allstate] insurance companies." (App. at 24). Minor, however, made no allegations whatsoever of specific actionable conduct against them in his complaint, and vicarious liability cannot be imposed on the individual officers of a company in their individual capacities absent allegations that they themselves participated in the alleged discrimination. Musikiwamba v. ESSI, Inc., 760 F.2d 740, 753-54 (7th Cir. 1985); Tillman v. Wheaton-Haven Recreation Ass'n, Inc., 517 F.2d 1141, 1144 (4th Cir. 1975).[6]

CONCLUSION

Minor's allegations of "conspiracy" among every individual defendant, corporate defendant, state government defendant, and/or judicial defendant are related solely to his own refusal to abide by the terms of the insurance contract. Refusing to honor his contractual obligations, and unwilling to accept or abide by the rulings of every judge to have heard his case, Minor contends that the only possible explanation for the abatement is a wide-ranging conspiracy cutting across all levels of the state and federal judiciary. As aptly stated by the trial court, Minor's "allegations against the private [Allstate]

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[6] Texas law holds that a corporate officer "cannot be held personally liable merely by reason of his corporate office." Houston Chronicle Publishing Co. v. Stewart, 668 S.W.2d 727, 730 (Tex. App.--Houston [1st Dist.] 1983, writ dism'd).

defendants are whole [sic] conclusory, having no basis save for Plaintiff's imagination." (App. at 4). Minor is attempting to re-litigate in federal court claims that were correctly disposed of through the state court abatement order.

There are no "special or important reasons" why Minor's petition for a writ of certiorari should be granted. Sup. Ct. R. 10. To the contrary, an unbroken chain of authority supports the Circuit Court's decision in this case, and nothing in Minor's petition hints at any legitimate reason for further consideration. For all of the reasons discussed above, Allstate respectfully requests that Minor's petition be denied.

Respectfully submitted,

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